

REMARKS

The Appellant respectfully acknowledges the Examiner's withdrawal of the rejection of claim 10 under 35 U.S.C. 112, first paragraph. The Appellant respectfully traverses all of the Examiner's remaining rejections for the reasons set forth below.

Summary of Claimed Subject Matter

The Examiner asserts that the summary of claimed subject matter contained in the brief mailed March 23, 2006, is deficient. In his answer, the Examiner asserts that "The brief is deficient because at the end of the first paragraph, reference is made to sealing a thin diaphragm 26A over the waste water port 28, but subject matter is not found [as cited by the Appellant]". Appellant respectfully disagrees and directs the Board's attention to the specification.

At page 6, lines 15-16, the specification reads: "A thin diaphragm 80 is sealed to the outer end 70 of the end portion 66," thus providing proper antecedent basis for sealing a thin diaphragm 80 over the overflow port 30, as required in claim 1. At page 7, lines 14-15, the specification reads: "The upper end [20A, of the drain pipe 16A] terminates in an annular flange 24A and in one embodiment is covered by a membrane 26A," thus providing antecedent basis for sealing a thin membrane 26A over the waste water port, as required in claim 1.

At page 8, line 1-3, the specification reads: "When it is determined that there are no leaks, the membrane 26A is removed from the flange 24A on the upper end 20A of the drain pipe 16A. Page 9, lines 8-11, the specification further discloses: "The plumber can then approach overflow port 30, and by using a cutting device 100, such as a knife or any other sharp object, cuts 102 can be made in the diaphragm 80," thus providing antecedent basis for cutting diaphragms 26A and 80 open to

permit fluid flow, as discussed in the summary of claimed subject matter contained in the brief.

Appellant respectfully asserts that the summary of claimed subject matter contained in the brief mailed March 23, 2006, is not deficient and a supplemental brief is not necessary.

Claim 1

The Examiner, in his answer, maintains his rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Ball (USPN 5,890,241), the Appellant's own disclosure, and Fritz (USPN 6,192,531). As argued by the Examiner, the Ball reference teaches that the port 28 can be plugged in any convenient manner (col. 2, lines 59-60). However, the Ball reference does not teach sealing a thin diaphragm over the waste water port, as claim 1 requires. Thus, the Ball reference does not teach this limitation.

The background section of the Appellant's specification teaches plugging a drain port in any conventional manner. However, the Appellant's background does not teach sealing the waste water port with a thin membrane, as claim 1 requires. Thus, the invention recited in claim 1 is not disclosed in the Appellant's background.

Fritz does not cure Ball. Fritz also does not teach sealing a thin diaphragm over a waste water port. Instead, Fritz teaches a test plug 15 within a retaining body 12 that is placed through an aperture 20 of a tub wall (col. 3, lines 1-25). The Fritz reference does not teach sealing a thin membrane over a waste water port as claim 1 requires. Thus, a combination of Ball and Fritz would not result in the claimed invention. Furthermore, there is no combination of Ball, Fritz, and the background section of the Appellant's specification that would render the invention recited in claim 1.

In addition, claim 1 requires sealing a thin membrane over the waste water port and not within the port as Fritz discloses. Thus, even if one was motivated to combine the Ball and Fritz references the resulting plug 15 would be within the drain and not over the waste water port as claim 1 requires. Thus, the combination of the prior art references could not result in the claimed invention and Appellant respectfully requests reversal of the 103 rejection of claim 1.

Claims 5 and 6

In his answer, the Examiner has maintained his rejection of claims 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over Ball and Fritz as applied to claim 1 and further in view of Francisco (USPN 6,088,843). The Examiner states in a Notice of Allowability for the parent application No. 09/954,420: "It is noted that Francisco teaches the flange and pipe structure claimed, however, Francisco does not specifically test for leaks using a flat planar member." Thus, Appellant reasserts that in the present application, because Francisco does not test for leaks using a flat member, as the Examiner has previously recognized, there would be no motivation to combine Francisco with Ball or Fritz to arrive at the present claimed invention. Thus, Applicant respectfully requests that the 103 rejection of claims 5-6 be reversed.

Claim 10

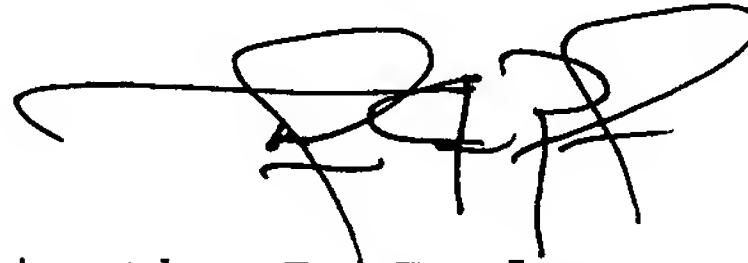
In his answer, the Examiner has maintained his rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Lewis (US Pub. No. 2002/0032926), Fritz and Oropallo et al. (USPN 6,618,875). Appellant respectfully reasserts that there is no combination of Lewis, Fritz and/or Oropallo that would teach the step of "sealing a thin diaphragm to the outer end of the upper

end portion to close the inlet to fluid flow," as required in claim 10. Accordingly, the Appellant respectfully requests that the 103 rejection of claim 10 be reversed.

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

Any fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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